

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13400, of Yon Toy Moy, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7104.2 to change a non-conforming use from grocery store, ground floor, to a grocery store and delicatessen, ground floor, in an R-4 District at the premises 538 - 3rd Street, N.E., (Square 754, Lot 98).

HEARING DATE: December 17, 1980
DECISION DATE: January 7, 1981

FINDINGS OF FACT:

1. The subject site is located on the southwest corner of the intersection of 3rd and F Streets, N.E., and is known as premises 538 3rd Street, N.E. It is in an R-4 District.
2. The subject site is rectangular in shape. The site measures 68.71 feet in length and 21.0 feet in width. It is improved with a three story structure comprising the subject grocery store on the ground floor and the residences of the owners on the upper two floors.
3. The subject grocery store is a non-conforming use, existing under a Certificate of Occupancy No. B-94433, dated August 5, 1975. The applicant now proposes to add a delicatessen service to the grocery store.
4. The subject property has been owned by the applicant for approximately sixteen years. There has been a grocery store on the premises for these sixteen years, at times operated by the applicant and at other times by a lessee.
5. The applicant testified that with the expansion of the business the hours of operation and the staff will remain the same. The hours of operation are from 8:00 a.m. to 7:00 p.m., Monday through Saturday and 9:00 a.m. to 2:00 p.m. p.m. on Sundays. No more than four persons operate the store. They are all members of the same family.
6. The applicant testified that there will be no changes to the exterior of the store. There will be no further signs indicating a carry-out service. There will be no seating facilities in the store. A new stove will be added to the other interior fixtures for the purpose of selling hot or cooked delicatessen foods.

7. A grocery store is a use first permitted in a C-1 District. A delicatessen or carry-out is also permitted in a C-1 District.

8. The immediate area is primarily residential. There are a few ground floor carry-out stores in the vicinity and one in the immediate area of the subject site.

9. Residential permit parking is in effect on the street in front of the subject store. There are bus zones on both sides of the subject site.

10. There is a dumpster on the site which is emptied on a weekly basis. The applicant has erected a fence on the side of the premises leading to the apartments above the store to discourage loitering.

11. The applicant submitted a petition in support of the applicant with approximately 140 signatures evidencing that there is a need for such hot food services in the neighborhood for those with no transportation or who prefer to walk a short distance for the services.

12. Advisory Neighborhood Commission - 6A, the Capitol Hill Restoration Society, the Stanton Park Neighborhood Association and private citizens, all homeowners in the immediate area, at the public hearing and by letters of record opposed the application. There was also submitted to the record a petition of approximately fifty signatures in opposition to the application. The common grounds of the opposition were as follows:

- a. The addition of a delicatessen to this market would intensify its current non-conforming use.
- b. This property is located in a residential neighborhood.
- c. There is considerable concern about increased litter and trash.
- d. There is not sufficient parking to accommodate a delicatessen's patrons.
- e. There is much opposition from the community to the granting of the application.
- f. The expanded facility is not needed in the area.

There was much testimony at the public hearing that the present business consists to a significant extent of the sale of "snack" food and wine and beer. This results in a significant litter problem in the neighborhood, as many of these items are consumed soon after purchase. The streets, gutters, and yards are continuously cluttered by a stream of candy and ice cream wrappers, beer bottles, soda bottles, plastic fruit drink containers, paper bags, potato chip bags, and other forms of debris. It was alleged that the addition of a carry-out food business will add to the problem, for individually wrapped carry-out food is the kind of merchandise that will result in added litter.

13. There was further testimony that the granting of the application will adversely affect the neighborhood because it will promote the immediate congregation of people, most of whom are not residents of the immediate neighborhood, in the vicinity of the market. These congregations have been quite boisterous and noisy in the past, particularly during the summer months. The addition of a carry-out to the business will add to this problem. Persons who purchase carry-out food will likely congregate and linger to an even greater extent around the market than they do now. It was alleged that the proposed change in the business will adversely affect the neighborhood where the business is located. It was further argued that adequate food service facilities exist in nearby commercial areas at the present time. There was further testimony that the applicant did not properly police the area and testimony that the signatories of the applicant's petition were basically seventeen years old and younger who frequented the subject store. For the most part, the opposition did not oppose the applicant's continuing the subject business provided there were better controls over litter and loitering. The opposition objected to any further expansion of the subject business.

14. The applicant in rebuttal stated that he had provided there trash cans in front of the store all of which had been stolen, that some people in the neighborhood were using his dumpster for their private garbage; that all the litter complained of could not be exclusively from his store, but also from the other stores; that the family does clean the premises and that he had erected the fence to prevent loitering on the site.

15. The Board is required by statute to give great weight to the issues and concerns of the ANC. In addressing these issues and concerns of the ANC, as well as those of the community organizations and private citizens, the Board finds that it concurs with the problems raised by the opposition as to littering, loitering and noise by the patrons of the business. The Board finds it likely that such nuisances will increase if the business is expanded. The Board also concurs that the increased business will adversely affect the neighborhood. The Board is also aware that the applicant is operating under a valid Certificate of Occupancy. The Board advises the community that if the problems they cite continue, they should seek remedies available to them through the law enforcement agencies of the District Government.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a change of one non-conforming use to another. The Board, in order to grant this relief through the special exception process, must have evidence in the record that the applicant has complied with the requirements of Sub-section 7104.2 and Section 7109 and that the relief can be granted as in harmony with the general intent and purpose of the Zoning Regulations and will not tend to affect adversely the use of neighboring property.

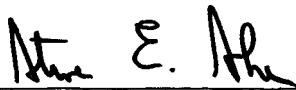
The Board concludes that the application can be considered, because the proposed use is permitted in the most restrictive district in which the existing use is permitted. The Board concludes that the change if approved, will result in the intensification of a non-conforming use, due to the increase in patronage, traffic, noise and litter which will result. The Board concludes that it is obvious from the record compiled by the ANC, community organizations and the private citizens, that the present use is adversely affecting the neighborhood and that any enlargement of the present use will exacerbate problems in the neighborhood even more. The Board concludes that the applicant has not met the test set forth in Sub-paragraph 7109.1112 in that the proposed non-conforming use would adversely affect the present character of the neighborhood.

The Board concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled. The Board further concludes that the relief cannot be granted as in harmony with the general intent and purpose of the Zoning Regulations. Accordingly, it is ORDERED that the Application is DENIED.

VOTE: 4-0 (Douglas J. Patton, William F. McIntosh, Charles R. Norris and Connie Fortune to DENY).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 4 MAY 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."